

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

4 BUNGIE, INC.,)
5 Plaintiff,) **CERTIFIED COPY**
6 vs.) NO. 2:21-cv-811-TSZ
7 AIMJUNKIES.COM; PHOENIX)
8 DIGITAL GROUP, LLC; DAVID)
9 SCHAEFER; JORDAN GREEN;)
10 JEFFREY CONWAY; and JAMES)
11 MAY,)
12 Defendants.)

CERTIFIED COPY

14 VIDEO RECORDED 30(B)(6) DEPOSITION UPON ORAL EXAMINATION
15 OF PHOENIX DIGITAL GROUP, LLC
16 BY DAVID SCHAEFER

18 6:02 P.M.

19 MARCH 20, 2023

20 WITNESS LOCATED AT: UNDISCLOSED LOCATION

21

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24 REPORTED BY: BETSY E. DECATER, RPR, CCR 3109
25 JOB NO : 971984

Bungie, Inc. vs Aimjunkies.com, et al.

30(b) (6) David Schaefer 03/20/2023

Page 2

1 A P P E A R A N C E S

2

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15 ALSO PRESENT: SCOTT NORTON, Videographer
JAMES BARKER
16

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1	I N D E X	Page 3
2		
3	EXAMINATION BY:	PAGE (S)
4	MR. MARCELO	5
5		
6		
7	EXHIBITS FOR IDENTIFICATION	PAGE
8		
9	Exhibit 60 Counterclaim Exhibit E	13
10	Exhibit 61 Screen Shot AimJunkies Website 3/19/23	36
11	Exhibit 62 Notice of Deposition	74
12	Exhibit 63 Notice of Deposition	75
13	Exhibit 64 Phoenix Digital's Supplemental Responses to Interrogatory 10	78
14		
15	Exhibit 65 Exhibit 5 to Bungie's Amended Complaint	101
16		
17	Exhibit 66 Screen Shot of AimJunkies Website with Post Dated 3/19/23	118
18		
19		
20		
21		
22		
23		
24		
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MARCH 20, 2023

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6:02 P.M.

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5 VIDEOGRAPHER: Good evening, everyone. Here
6 begins the remote deposition of Phoenix Group, LLC,
7 pursuant FRCP 30(b) (6). This is in the matter of
8 Bungie, Inc. versus AimJunkies.com, et al. This case is
9 in the United States District Court, Western District of
10 Washington at Seattle. Case number is 2:21-cv-811-TSZ.

11 Today's date is Monday, March 20th, 2023. The
12 current time is 6:02 p.m. Pacific time. This is a
13 remote deposition through Zoom video conferencing. The
14 videographer is Scott Norton, here on behalf Centex
15 Litigation Services. Would counsel please introduce
16 yourselves and state whom you represent?

17 MR. MARCELO: Christian Marcelo for
18 Plaintiff, Bungie. I'm joined by James Barker, general
19 counsel for Bungie.

20 MR. MANN: And I am Philip Mann. I'm here
21 on behalf of all Defendants, in particular Phoenix
22 Digital for this particular 30(b) (6) deposition.

23 VIDEOGRAPHER: Thank you all very much. Our
24 reporter today is of Betsy Decater with Centex. Will
25 the reporter please swear in the witness.

Page 5

1 DAVID SCHAEFER,

2 sworn as a witness by the Certified Court Reporter,

3 testified as follows:

4

5 EXAMINATION

6 BY MR. MARCELO:

7 A. Now, is this the personal or the 30(b) (6)?

8 Q. This is the 30(b) (6) deposition of Phoenix
9 Digital. My hope is that we will get everything done in
10 this one deposition. But we can always shift over to
11 the other deposition after if we need to.

12 Mr. Schaefer, you've been through this deposition
13 process before, right?

14 A. Yes.

15 Q. You were deposed in connection with the
16 arbitration?

17 A. Yes.

18 Q. Okay. So same general rules apply. I'm going to
19 kind of go through them again. Remember to talk one at
20 a time, wait for me to finish the question before you
21 start answering. If something's unclear, ask me, I'll
22 try to make the question more clear. No nonverbal
23 answers. We'll need answers on the record. Okay?

24 A. Yes.

25 Q. And especially in video chats we tend to start

Bungie, Inc. vs Aimjunkies.com, et al.

30(b) (6) David Schaefer 03/20/2023

Page 49

1 **Q. What is Phoenix Digital's allegation regarding**
2 **how Bungie breached the terms of service by displaying**
3 **the cheat software?**

4 A. Let's scroll down two paragraphs. "Unless
5 explicitly authorized by AimJunkies, our services and
6 our software may not be sold, resold, leased, rented,
7 leased, distributed, transferred or used in any
8 commercial way." What is commercial way --

9 **Q. We'll get there in a second. Mr. Schaefer, but**
10 **I'm still -- I just need an answer to the question**
11 **regarding the display.**

12 MR. MANN: Objection. He already answered
13 your question.

14 A. It was used in a commercial way.

15 MR. MANN: And I object to you arguing with
16 the witness. He answered your question.

17 **Q. (BY MR. MARCELO) I'm going to ask back the**
18 **question again so that I have a clean answer. What ways**
19 **is Phoenix Digital alleging that Bungie displayed the**
20 **cheat software that breached the terms of service?**

21 MR. MANN: Asked and answered.

22 A. Yes.

23 MR. MANN: Go ahead and answer again. Let's
24 play the game here.

25 A. Your -- what do you call that, a 301(b)(6) or

1 whatever, the want-a-be expert said that you guys got it
2 from the guy that purchased it and you opened it up and
3 took a look at it.

4 Q. (BY MR. MARCELO) Okay.

5 A. Also, also, our expert has looked at the AEO that
6 was provided and has provided us reports showing that
7 you guys did more than just look at it.

8 MR. MANN: I'll caution you, Mr. Schaefer.
9 Don't get into any of that stuff. That's a
10 non-testifying expert, so I'll caution you not to talk
11 about that.

12 Q. (BY MR. MARCELO) Mr. Schaefer, any other ways
13 Phoenix Digital alleges Bungie breached Phoenix
14 Digital's terms of service?

15 A. Two paragraphs down it says that it was used in a
16 commercial way, and it's not to be used in any
17 commercial way.

18 Q. And what exactly was the commercial way Bungie
19 used the cheat software?

20 A. Your expert stated that they fired it up so they
21 could see how it worked. A representative of Bungie who
22 said that they used it to see how it works, that's a
23 commercial way.

24 Q. Can you explain that to me? What do you mean
25 that is a commercial way?

Bungie, Inc. vs Aimjunkies.com, et al.

30(b) (6) David Schaefer 03/20/2023

1 A. Was it used for personal use?

2 Q. So any use that's not personal use is commercial
3 use?

4 A. 100 percent.

5 Q. Any other ways that Phoenix Digital alleges
6 Bungie breached the Phoenix Digital terms of service?

7 A. Let's go to the next paragraph, "You shall not
8 modify, hack, decompile, disassemble, reverse engineer,
9 derive source code or create derivative works of our
10 software in part or in whole. You shall not transfer
11 our software or display the software's object code on
12 any computer screen or to make any hard copy memory
13 dumps of the software's object code." We allege you did
14 that.

15 Q. And when you say "we allege you did that," which
16 of those actions that you just read --

17 A. All of the above.

18 Q. Mr. Schaefer, just let me finish the question.

19 Which of those actions that you just read does
20 Phoenix Digital allege Bungie did?

21 A. All of the above.

22 Q. So Phoenix Digital alleges that Bungie modified
23 the cheat software?

24 MR. MANN: Asked and answered.

25 Q. (BY MR. MARCELO) Is that right?

1 A. Phoenix Digital is paying none of the legal fees
2 for none of the defendants because they don't have any
3 revenue to pay fees.

4 **Q. So who is paying the legal fees, then?**

5 A. The individuals when they're financially capable.
6 And at this point that's not happening real fast. But,
7 hey, I keep pushing.

8 **Q. And so do these legal fees then include charges
9 for Mr. May as well?**

10 A. I can't speak for Mr. May.

11 **Q. You don't know one way or another whether the
12 legal fees claimed as damages here include legal fees
13 for Mr. May?**

14 A. No, they do not. I can only speak -- I'm
15 30(b) (6) and I can only speak for Phoenix Digital. His
16 would be on top of this.

17 **Q. Let's scroll back up for a second to the second
18 sentence, "Such damages include but are not limited to
19 investigating and responding to inaccurate and factually
20 baseless claims." Would you agree if the claims were
21 accurate, then there wouldn't be damages to Phoenix
22 Digital?**

23 A. I don't understand the question.

24 **Q. Yeah. Let me phrase it a different way.**

25 **If the claims made by Bungie were accurate,**

1 **Phoenix Digital isn't alleging that Bungie would be
2 liable for asserting those claims, right?**

3 A. You can assert until the cows come home, but you
4 ought to have some evidence to back it up. No, it was
5 your 30(b) (6) guy that said we don't have any evidence,
6 we just believe.

7 **Q. What I'm asking here is where it says "inaccurate
8 and factually baseless claims," if the claims are
9 accurate, is it Phoenix Digital's position that Bungie
10 would still be liable for these damages?**

11 A. I don't know. I'm not a lawyer.

12 **Q. Let's talk about the valuation of AimJunkies.**

13 A. Yes.

14 **Q. Okay. So in the supplemental response exhibit --
15 sorry, what exhibit is this?**

16 THE COURT REPORTER: I believe it's 64.

17 MR. MARCELO: Thank you.

18 **Q. (BY MR. MARCELO) Mr. Schaefer, in Exhibit 64,
19 supplemental response, it says, "The value of the
20 AimJunkies website declined from a high of \$6,384,000 in
21 2019," right?**

22 A. Yes.

23 **Q. Where did the valuation of \$6,384,000 come from?**

24 **A. It came from a times revenue method of**

25 **calculating based on the federal tax returns.**

1 **Q. Explain to me what a times revenue calculation**

2 **is.**

3 A. I'll read it to you. "Under the times revenue

4 business valuation method, a stream of revenues

5 generated over a certain period of time is applied to a

6 multiplier which depends on the industry and economic

7 environment."

8 **Q. And where are you reading that from?**

9 A. Investopia. Investopedia, excuse me.

10 **Q. Who came up with this valuation?**

11 A. I did.

12 **Q. And how did you come up with it for 2019**

13 **specifically? What inputs did you use?**

14 A. I used the federal tax return, like I've already

15 said.

16 **Q. And so the -- you used the revenue for Phoenix**

17 **Digital in 2019?**

18 A. Yes.

19 **Q. Do you have any educational background in**

20 **providing valuations of companies?**

21 A. What was the question?

22 **Q. Do you have any educational background in**

23 **providing valuations of companies?**

24 A. I don't understand the question.

25 **Q. Would you say you're an expert at providing**

1 **valuations of companies?**

2 A. I wouldn't say I'm an expert.

3 **Q. Is there any other factors you considered in**

4 **determining the value of the AimJunkies website?**

5 A. No.

6 **Q. Were there any offers to purchase the AimJunkies**
7 **website in 2019?**

8 A. Yes.

9 **Q. From who?**

10 A. Banek.

11 **Q. How much did he offer to purchase the website**
12 **for?**

13 A. I don't remember.

14 **Q. You remember the conversation with him --**

15 A. Yeah. We've already covered all of this before,
16 Christian. I'm not going to go down this path again.

17 **Q. I'm going to keep asking about these because**
18 **these are your specific damages. The conversation with**
19 **Mr. Banek about purchasing the AimJunkies website, that**
20 **was in 2019?**

21 A. I believe so. We sent -- if you remember
22 correctly, we sent a response to what's his name down in
23 LA and told him that we had sold it because we had it
24 sold.

25 **Q. And do you remember roughly how much Mr. Banek**

1 **agreed to pay for the AimJunkies website?**

2 A. I do not remember.

3 **Q. Was it over one million?**

4 A. I do not remember.

5 **Q. And I'm just asking you if you remember if it was**
6 **over a million dollars or not?**

7 A. I'm not going to commit to a number because I do
8 not remember what it was.

9 **Q. Was anyone else involved in the conversation with**
10 **Mr. Banek about purchasing the website?**

11 A. No.

12 **Q. Any notes or writing evidencing that**
13 **conversation?**

14 A. No.

15 **Q. And it's just conversation between you and Mr.**
16 **Banek?**

17 A. Yes.

18 **Q. Who called who regarding that sale?**

19 A. Nobody called anybody.

20 **Q. How did you communicate around the sale?**

21 A. We've already covered all of this.

22 **Q. Mr. Schaefer, how did you communicate regarding**
23 **this sale?**

24 A. I don't remember.

25 **Q. And you don't remember if the sale -- the**

Bungie, Inc. vs Aimjunkies.com, et al.

30(b) (6) David Schaefer 03/20/2023

1 MR. MARCELO: I think now's probably a good
2 time to take a break because I'm sure that Betsy would
3 love a break.

4 VIDEOPRAGHER: The time 8:03 p.m. We're now
5 off the record.

6 (Recess taken.)

7 VIDEOPRAGHER: The time is 8:39 p.m. We are
8 back on the record.

9 Q. (BY MR. MARCELO) Mr. Schaefer, you understand
10 you're still under oath?

11 A. Yes.

12 Q. Let's go back for a second to Exhibit 60, the
13 terms of service for Phoenix Digital. What evidence
14 does Phoenix Digital have that that terms of service was
15 on the website in January of 2020?

16 A. I'd have to think about that answer. I don't
17 have an answer for that right now. I know what the
18 facts are. I don't have to guess. I don't have to
19 surmise. It's been on the site for years, and you can
20 ask anybody that's dealing with the site, whether it's
21 Jordan or Jeff or James or whoever, anybody you want to
22 bring in, and they're going to tell you all the same
23 thing because they know that's been there from day one.

24 MR. MANN: And I'll state for the record
25 that testimony under oath is in fact evidence.

1 Q. (BY MR. MARCELO) And, Mr. Schaefer, all I'm
2 asking is what evidence is there, whether it's
3 testimony, whether it's documents --

4 A. Testimony. I gave -- I gave you the documents
5 that are on the site. To be honest with you, your
6 people have been there. Is it the same one that's on
7 there now as what was there before? You tell me.

8 Q. When you say you gave the documents on the site,
9 what documents are you referring to?

10 A. The one that you've got here in -- on the record.

11 Q. Right. Are there any other documents related to
12 this 2020 terms of service that Phoenix Digital
13 produced?

14 A. They're as accessible as what yours are from
15 2019.

16 Q. Mr. Schaefer, I want to focus on Phoenix
17 Digital's terms of service, if there's any other records
18 of that 2020 terms of service being on the AimJunkies
19 website in January of 2020?

20 A. Not that I'm aware of unless it's on Wayback or
21 something like Wayback.

22 Q. And you referenced an expert earlier, and I don't
23 want to get into anything privileged, I'm just wondering
24 if that expert is expected to testify in this trial?

25 A. I can't tell you at this point.

1 **Q. You don't know one way or another?**

2 A. We will have expert this time.

3 **Q. You will have a testify -- the answer is you will**

4 **have a testifying --**

5 MR. MANN: At this point, wait, I'm going to
6 object. This is getting into attorney work product
7 matters and attorney-client privilege. Mr. Schaefer,
8 you do not have to answer any questions regarding the
9 strategy that you're going to follow based on advice
10 that you may or may not have received from your counsel.

11 MR. MARCELO: And I -- Mr. Mann, let me know
12 if you disagree. I think with this specific question of
13 whether the expert that was referred to is intended to
14 be a testifying expert, just one way or another is not
15 privileged.

16 MR. MANN: Did you say is intended to?

17 MR. MARCELO: Right. The expert --

18 MR. MANN: No. No. If you're talking -- if
19 you're talking -- if you're asking about what our
20 intentions are, what procedures we intend to follow in
21 the course of this litigation, you are asking for
22 attorney work product. We are not obliged to tell you
23 what our strategy is, what our intentions are and how
24 we're going to handle this litigation. That is
25 privileged. You do not have to answer.

Page 100

1 MR. MARCELO: And, Mr. Mann, you're saying

2 that covers whether or not the expert that's been

3 referred to will testify at the trial or not?

4 MR. MANN: Your all -- you're asking for

5 what our intentions are. Have we identified anyone as a

6 testifying expert?

7 MR. MARCELO: Well, and that's why I'm

8 clarifying.

9 MR. MANN: No. Can you read English? Have

10 you seen us identify anyone as a testifying expert?

11 MR. MARCELO: Mr. Mann, I'll remind you of

12 your own reminder of professionalism.

13 MR. MANN: I'm asking you a question. You

14 understand this. Have we identified any testifying

15 experts? That's a yes or no question, and it can be

16 answered by somebody who can read and understand

17 English.

18 MR. MARCELO: No, not to our knowledge you

19 haven't identified --

20 MR. MANN: Then, then, then you have no

21 business asking this question. You're asking for what

22 our intentions are and how we're going to handle this

23 lawsuit. We are not going to tell you our strategy or

24 what our intentions are. You will find out what you're

25 entitled to in due course. Simple as that.

Bungie, Inc. vs Aimjunkies.com, et al.

30(b) (6) David Schaefer 03/20/2023

Page 101

1 Q. (BY MR. MARCELO) Mr. Schaefer, is Phoenix

2 Digital contending that Bungie's trademark for the
3 Destiny 2 mark are invalid?

4 A. That Bungie's Destiny 2 marks are invalid?

5 Q. Right.

6 A. Yes.

7 Q. On what basis?

8 A. The only ones that were valid was for Beyond
9 Light, and there were eight subscriptions sold in Beyond
10 Light. Everything else is not valid.

11 Q. And when you say not valid as to Phoenix -- or as
12 to Bungie's Destiny 2 marks --

13 A. There were -- there were no trademarks -- if you
14 look at the date of the trademarks, they were not in
15 place at the time of the litigation or the time that we
16 were selling the cheat.

19 Q. (BY MR. MARCELO) I'll drop into the chat what
20 will be marked as Exhibit 65. Mr. Schaefer, do you see
21 this document?

22 A. Yep.

23 Q. This was attached to Bungie's Amended Complaint,
24 Exhibit 5.

25 A. That's Destiny. That's not Destiny 2.

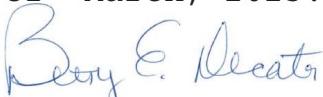
Page 129

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REPORTER'S CERTIFICATE

2 I, BETSY E. DECATER, the undersigned Certified Court
3 Reporter, pursuant to RCW 5.28.010 authorized to
4 administer oaths and affirmations in and for the State
5 of Washington, do hereby certify that the sworn
6 testimony and/or proceedings, a transcript of which is
7 attached, was given before me at the time and place
8 stated therein; that any and/or all witness(es) were
9 duly sworn to testify to the truth; that the sworn
10 testimony and/or proceedings were by me stenographically
11 recorded and transcribed under my supervision, to the
12 best of my ability; that the foregoing transcript
13 contains a full, true, and accurate record of all the
14 sworn testimony and/or proceedings given and occurring
15 at the time and place stated in the transcript; that a
16 review of which was requested; that I am in no way
17 related to any party to the matter, nor to any counsel,
18 nor do I have any financial interest in the event of the
19 cause.

20 WITNESS MY HAND and DIGITAL SIGNATURE this 27th day
21 of March, 2023.

22 

23 BETSY E. DECATER, RPR
24 Washington Certified Court Reporter, CCR 3109

25